IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2007

Coram:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.R.P.(NPD)No. 1155 of 2004
and
C.M.P.Nos.8749 and 14174 of 2004

A.HAji Mohammed .. Petitioner(Judgment Debtor)

vs.

M.Veeratteswaran .. Respondent (Decree Holder)

PRAYER:Civil Revision Petition filed against the fair and decretal order dated 13.01.2004 made in E.P.No.66 of 2000 in O.S.No.144 of 1988 on the file of the Principal District Munsif, Karaikal.

For Petitioner : No Appearance
For Respondent : Mr.Kalpa Reddy

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O R D E R

The Civil Revision Petitioner is the defendant in O.S.No.144 of 1998 on the file of the Principal District Munsif, Karaikal. In the suit, O.S.No.144 of 1988, a decree was passed on 09.09.1988 after full trial.

2.The Civil Revision Petitioner/Defendant/JD has not preferred any appeal against the judgment and decree dated 09.09.1988 passed in O.S.No.144 of 1988 for a sum of Rs.15,000/- and the rate of interest being 12% per annum. The Civil Revision Petitioner/Defendant/JD has executed the said pronote.

3.It appears that in C.M.P.No.8749 of 2004 in C.R.P. NPD No.1155 of 2004, this Court has passed order on 19.05.2004 'ordering interim stay' on condition that the petitioner deposits a sum of Rs.10,150/- with subsequent interest in E.P.No.66 of 2000 in O.S.No.144 of 1988 on the file of the learned Principal District Munsif, Karaikal and that the said petition was so ordered.

4.Today, when the matter was taken up, there is no representation on the side of the petitioner. However, Mr.Kalpa Reddy the learned counsel for the respondent has argued the matter before this Court.

5.According to the learned counsel for the Respondent/Plaintiff/Decree holder, earlier E.P.No.58 of 1989 was filed by the respondent/Decree holder and the said E.P. was ordered

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by the Court below directing the attachment of the revision petitioner's properties and keeping the same in the custody of the sureties. Thereafter, E.A.No.55 of 1992 in E.P.No.58 of 1999 was filed by the respondent/decree holder and it was directed by the Court below that the sureties are to pay a value of the attached goods as compensation amounted to Rs.13,400/- on 04.07.1994. It is the case of the respondent/Decree holder that neither the Civil Revision petitioner/JD nor the sureties paid the said sum of Rs.13,400/- with subsequent interest and later, E.P.No.66 of 2000 was filed by the respondent/Decree holder against the Civil Revision Petitioner/Defendant/JD for attaching the movables for amount of Rs.27,910/- being the principal of interest after adjusting the part payment of Rs.4,000/- paid by the Revision Petitioner/Defendant/JD.

6.According to the learned counsel for the Respondent/Decree holder, the Civil Revision Petitioner/Defendant/JD took a stand in E.P.No.66 of 2000 that he paid a sum of Rs.6,000/- in full and final settlement and for the balance amount, the respondent/decree holder should proceed against the sureties and not against the Civil Revision Petitioner.

7.The learned Principal District Munsif, Karaikal has passed orders in E.P.No.66 of 2000 in O.S.No.144 of 1988 on 13.01.2004 inter alia observing that 'the Civil Revision Petitioner/Defendant/JD who was protracting the execution came with the defence of part payment without any receipt and the Civil Revision Petitioner/Defendant/JD paid only a sum of Rs.4,000/- to the respondent/decree holder which was duly acknowledged by the counsel and that there was no evidence available on record to indicate that the rest of the decree amount was paid by the Revision Petitioner/JD and that the JD was directed to pay a sum of Rs.27,910/- with 6% subsequent interest to the decree holder after deducting the sum of Rs.4,000/- on or before 05.02.2004 failing which ordering attachment of the movables mentioned in the schedule of the Execution Petition.

8.It is the case of the Civil Revision Petitioner, as seen from the grounds said out in the Revision Petition that there was an earlier attachment of movables of the Civil Revision Petitioner/JD and that on 01.07.1994, the Executing Court passed order in E.A.No.52 of 1998 to the effect that the respondent/decree holder was entitled to get compensation of Rs.13,400/- from the sureties and that the order has become final and the same will bind the parties. It is also the further case of the Civil Revision Petitioner that the Executing Court failed to take into consideration that the decree was for Rs.16,700/- in 1988 with 6% interest and that the movables were sold out as early as in 1994 for Rs.13,400/- and the sureties were entrusted with the funds of Rs.13,400/- and if so calculated the balance decree amount payable in the year 2000 would have been almost nil, in as much as the sum of Rs.4,000/- was paid by the Revision Petitioner/JD as early as on

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13.03.1989 and therefore, the present order directing the Civil Revision Petitioner to pay a sum of Rs.27,910/- (-) Rs.4,000/- is illegal and it is clear case of illegal exercise of jurisdiction.

9.It is significant to note refer to E.P.No.66 of 2000 filed by the Respondent/Petitioner/Decree holder at column No.10, it is specifically mentioned that earlier E.P. amount was Rs.20,601.50/- and the interest of Rs.1,144/- being the interest relating to the period from 10.03.1989 to 17.04.1990 for Rs.17,600/- and deducting a sum of Rs.2,000/- a part payment made on 17.04.1990, the balance would come to Rs.19,745.50/- and a sum of Rs.616 /- being the interest at 6% per annum in regard to the period from 17.04.1990 to 20.11.1990 for Rs.17,600/- and giving credit to the part payment of Rs.2,000/- made on 21.11.1990 adding interest at 6% per annum from 21.11.1990 to 08...99 for Rs.17,600/- a sum of Rs.9548/-, it comes to Rs.27,909.50/- and adding the stamp on the present E.P., 0.75 paise and the balance payable is rounded up to Rs.27,910/-.

10.The learned counsel for the Respondent/Decree holder informs this Court that the sureties have not paid Rs.13,400/- to the total amount due to be paid to the civil Revision Petitioner.

11.According to the learned counsel for the respondent/decree holder, even after giving credit to the payment of Rs.4,000/- paid earlier by the Revision Petitioner/JD and also taking note of the sum of Rs.10,150/- with subsequent interest yet there is a balance of Rs.13,760/- which has not been paid by the Civil Revision Petitioner and therefore, this sum is due from the Civil Revision Petitioner to the respondent/decree holder.

12.It cannot be gain said that there is no impediment in law for the respondent/Plaintiff to proceed against the Revision Petitioner/JD /Defendant in regard to the due amount under the decree and the Civil Revision Petitioner cannot escape his liability and he cannot wriggle out of the predicament that he is in. Moreover, the liability of the Civil Revision Petitioner/Defendant/JD will extinguish only when the full amount due under judgment and decree is completely satisfied.

13.In that view of the matter, the Civil Revision Petition fails and the same is hereby dismissed to promote the substantial cause of justice. The order of the trial Court in E.P.No.66 of 2000 in O.S.No.144 of 1988 dated 13.01.2004 is hereby confirmed for the reasons assigned by this Court in the present revision. However, the parties are directed to bear their own costs in the facts and circumstances of the case.

14.The learned counsel for the respondent/Decree holder/Plaintiff represents that the total due amount under the decree comes to Rs.27,910/- and as per the order of this Court passed in C.M.P.No.8749 of 2004 in C.R.P.NPD No.1155 of 2004, a sum

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of Rs.10,150/- with subsequent interest in E.P.No.66 of 2000 in O.S.No.144 of 1988 on the file of the learned District Munsif, Karaikal was directed to be deposited by the Civil Revision Petitioner/Defendant/JD and already a sum of Rs.4,000/- was paid by the Revision Petitioner and interest at 6% per annum comes to Rs.825.60/- and the total period is 7 years and 9 months and giving credit to a sum of Rs.13,760/-, the total amount which is now due to be paid by the Civil Revision Petitioner/Defendant/JD including interest up to date comes to Rs.20,158.40/-.

14.It transpires that the Civil Revision Petitioner/Defendant/JD has deposited a sum of Rs.10,323/- on 07.09.2004 in S.B.I.,Karaikal as per the direction issued by this Court in C.M.P.No.8749 of 2004 in C.R.P. NPD No.1155 of 2004 dated 19.05.2004 and that he has already paid a sum of Rs.4,000/- as admitted by the respondent/Decree holder/Plaintiff and thus, the Civil Revision Petitioner has paid/deposited a sum of Rs.14,323/- in all and he has to pay the remaining balance amount with interest at 6% per annum.

15.In that view of the matter, the Civil Revision Petitioner is directed to pay the balance amount due after deducting the total sum of Rs.14,323/- along with interest at 6% per annum till date of passing of this order in revision to the credit of the E.P.No.66 of 2000 in O.S.No.144 of 1988 on the file of the Principal District Munsif, Karaikal within two weeks from the date of receipt of a copy of this order.

16.It is open to the decree holder to receive the balance amount with interest up to date (including the sum of Rs.10,323/- so deposited on 07.09.2004 in S.B.I. Karaikal) from the trial Court after moving necessary interlocutory application under the Civil Rules of Practice for payment out in the manner known to law. The connected miscellaneous petitions are closed.

Vri

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Principal District Munsif,
Karaikal.
2. The Section Officer,
VR Section, High Court, Madras.

1 cc to Mr.S.Udayakumar, Advocate, SR.73031
1 cc to Mr.Venkataseshan, Advocate, SR.72746

bk (co)
dv/4.1.

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